



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

February 27, 2006

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Gerry Foell, Regional Roads Engineer  
Great Plains Regional Office  
Bureau of Indian Affairs  
U.S. Department of the Interior  
115 Fourth Avenue S.E.  
Aberdeen, SD 57401

Ken McLaughlin, Facility Operator  
Standing Rock Agency Branch of Roads  
Bureau of Indian Affairs  
U.S. Department of the Interior  
P.O. Box E  
Fort Yates, ND 58538

Re: In the Matter of Bureau of Indian Affairs Yates Roads Shop Facility,  
Complaint and Notice of Opportunity for Hearing, Section 9006 RCRA

Dear Messrs. Foell and McLaughlin:

The U.S. Environmental Protection Agency ("EPA") is issuing the enclosed Complaint and Notice of Opportunity for Hearing ("Complaint") to the Bureau of Indian Affairs Great Plains Regional Office Roads Department and Standing Rock Agency Branch of Roads ("BIA") for alleged underground storage tank ("UST") violations at the BIA Roads Shop facility in Fort Yates, North Dakota. The Complaint is issued pursuant to section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e.

EPA alleges in the Complaint that BIA failed to comply with the federal UST regulations codified at 40 C.F.R. Part 280, subpart D, for two USTs located at the Fort Yates Road Shop facility, Building 184, Proposal Avenue, Fort Yates, North Dakota, in violation of RCRA § 9003(c), 42 U.S.C. § 6991b(c). This facility was the subject of a previous enforcement action in 2003 for similar UST violations following an UST compliance inspection conducted in 2002.

With regard to the Complaint and alleged RCRA violations, you have the right to a hearing to contest the factual allegations and/or proposed penalty. A copy of EPA's



Printed on Recycled Paper

administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, BIA must file a written answer and one copy within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

If you do not file an answer by the deadline, you may be found in default. A default judgment may impose the full penalty proposed in the Complaint.

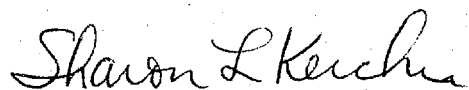
BIA has an opportunity to confer with the Administrator prior to the Complaint becoming final after the administrative proceedings subject to Part 22 have been fully exhausted, including the filing of an appeal with the Environmental Appeals Board ("EAB") pursuant to 40 C.F.R. § 22.30. Within thirty (30) days of service of the EAB's final decision, BIA may file a written request with the Administrator seeking an opportunity to confer. This order will become final pursuant to section 6001(b) of RCRA, 42 U.S.C. § 6961(b), if no written request to confer is filed within the designated thirty (30) day period.

Whether or not you request a hearing, we encourage you to confer informally with EPA concerning the alleged violations to negotiate a settlement in lieu of proceeding with a formal hearing. You may wish to appear at an informal conference yourself and/or be represented by your counsel. To arrange for such a conference, please contact Brenda Morris, Enforcement Attorney, Legal Enforcement Program, at the number provided below. While an informal conference procedure may be pursued as an alternative to, or simultaneous with, a hearing, request for such a conference does not extend the thirty (30) day period during which a request for hearing must be submitted.

If you have any questions, the most knowledgeable persons on my staff regarding this matter are Brenda Morris and Lisa Luebke. Ms. Morris is in our Legal Enforcement Program and can be reached at (303) 312-6891. Ms. Luebke is in our Underground Storage Tank Program, and can be reached at (303) 312-6256.

We urge your prompt attention to this matter.

Sincerely,



Sharon Kercher, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures: Consolidated Rule of Civil Practice, 40 C.F.R. part 22  
Complaint and Notice of Opportunity for Hearing with Exhibits 1 and 2

cc: Steve McLaughlin, BIA Standing Rock Agency Superintendent  
Ron His Horse is Thunder, Standing Rock Sioux Tribe Chairman  
Bob Buffalo Boy, Standing Rock Sioux Tribe Environmental Director

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2006 FEB 27 PM 1:51

FILED  
EPA REGION VII  
HEARING CLERK

IN THE MATTER OF:

Bureau of Indian Affairs Great Plains  
Regional Office Roads Department and  
Standing Rock Agency Branch of Roads

(BIA Roads Shop, Building 184  
Proposal Avenue,  
Standing Rock Reservation  
Fort Yates, ND 58538)

Respondents.

Docket No. RCRA-08-2006-0002

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**AUTHORITY**

This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

1. Subtitle I of RCRA, RCRA §§ 9001 - 9010, 42 U.S.C. §§ 6991 - 6991i, authorizes EPA to regulate the installation and use of "underground storage tanks" which contain "regulated substances."

2. Pursuant to Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), any owner or operator of an underground storage tank who fails to comply with any requirement or standard promulgated by the Administrator under section 6991b of this title shall be subject to a civil penalty not to exceed \$11,000 for each tank for each day of violation.

3. Federal facilities are subject to and required to comply with all federal, state, interstate and local UST requirements in the same manner and to the same extent as any other person, including enforcement for noncompliance, pursuant to RCRA §§ 6001(b)(1) and 9007, 42 U.S.C. §§ 6961(b)(1) and 6991f.

4. EPA has jurisdiction over this matter pursuant to RCRA § 9006, 42 U.S.C. § 6991e.

5. Section 9003(c)(1) of RCRA, 42 U.S.C. § 6991b(c)(1), authorizes EPA to promulgate regulations setting forth requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. EPA has promulgated such regulations at 40 C.F.R. Part 280, Subpart D.

6. Petroleum and any fraction thereof is a regulated substance as defined at RCRA § 9001(2), 42 U.S.C. § 6991(2).

7. EPA is the "implementing agency" as that term is used at 40 C.F.R. § 280.12.

8. Respondents BIA Great Plains Regional Office Roads Department and BIA Standing Rock Agency Branch of Roads, divisions of a bureau of the United States Department of the Interior, is an "owner" or "operator" within the respective meanings of RCRA §§9001(3) and (4), 42 U.S.C. §§ 6991(3) and (4), and 40 C.F.R. § 280.12 of an "underground storage tank system" ("UST" or "UST system") as defined by RCRA § 9001(1), 42 U.S.C. § 6991(10), and 40 C.F.R. § 280.12.

9. Respondents own or operate two 10,000 gallon fiberglass reinforced plastic USTs (identified as EPA Facility Id No. 3040014) installed approximately in 1987 located at the BIA Roads Shop facility ("facility"), Building 184, Proposal Avenue, Fort Yates, North Dakota, within the exterior boundaries of the Standing Rock Sioux Indian Reservation. UST 1 contains unleaded fuel. UST 2 contains diesel fuel.

10. The USTs use an automatic tank gauge ("ATG") for tank leak detection. The piping is safe suction and steel with cathodic protection.

11. On June 3, 2005, EPA Inspector Patricia Pfeiffer ("the inspector") spoke with a facility representative at which time she provided advance notice of a planned UST inspection of the facility and requested that the following facility records be available at the time of the inspection: 1) the last 12 months of leak detection records, specifically one passing result for each UST for the past 12 months; and 2) two previous cathodic protection test results.

12. On June 9, 2005, the inspector, accompanied by Reuben Whitebull, Jr., Standing Rock Sioux Tribe UST Tribal Technician, conducted an inspection at the facility to determine compliance with RCRA Subtitle I and the EPA regulations relating to USTs.

13. At the time of the inspection, the inspector determined that leak tests were not run on the two USTs for July, August, and September 2004.

14. At the time of the inspection, the inspector observed that the leak test performed on the diesel tank in November 2004 was invalid.

15. The inspector completed a "Notice of Inspection" form which was signed by both the inspector and facility representative Ken McLaughlin.

16. As part of her follow-up to the inspection, the inspector requested that the facility provide her with the ATG strips for July, August and September 2005.

17. Based on a review of the ATG strips for UST 1 for July and August 2005, the inspector determined that the ATG could not perform a leak test for UST 1 for those two months based on a missing ATG probe float.

**Count 1**  
**(Failure to monitor UST1 at least every 30 days)**

18. Pursuant to the requirements of 40 C.F.R. § 280.41, all UST owners and operators must monitor tanks at least every thirty (30) days for releases using one of the methods listed in 40 C.F.R. § 280.43, including automatic tank gauging.

19. Respondents failed to monitor UST 1 at least every 30 days for releases during the months of July, August, and September 2004; and July and August 2005.

20. Respondents' failure to monitor UST 1 at least every thirty (30) days for the

months of July, August, and September 2004; and July and August 2005, constitutes a violation of RCRA § 9003(c), 42 U.S.C. § 6991b(c), and 40 C.F.R. § 280.41(a).

**Count 2**  
**(Failure to monitor UST2 at least every 30 days)**

21. Respondents failed to monitor UST 2 at least every 30 days for releases during the months of July, August, September and November 2004, as required by 40 C.F.R. § 280.41.

22. Respondents' failure to monitor UST 2 at least every 30 days for the months of July, August, September and November 2004, constitutes a violation of RCRA § 9003(c), 42 U.S.C. § 6991b(c), and 40 C.F.R. § 280.41(a).

**PROPOSED CIVIL PENALTY**

RCRA § 9006(d)(2)(C), 42 U.S.C. § 6991e(d)(2)(C), authorizes the assessment of a civil penalty of up to \$11,000 for each UST for each day of violation. Based upon the facts alleged in this Complaint and taking into account the factors prescribed by statute, i.e., the seriousness of the violations and any good faith efforts by Respondents to comply with the applicable requirements, Complainant proposes to assess a civil penalty of \$12,000.00 as follows:

<u>COUNT</u>	<u>VIOLATION</u>	<u>PROPOSED PENALTY</u>
Count 1	Failure to monitor UST 1 at least every 30 days, 40 C.F.R. § 280.41(a)	\$6,000
Count 2	Failure to monitor UST 2 at least every 30 days, 40 C.F.R. § 280.41(a)	\$6,000

**TOTAL PROPOSED PENALTY: \$12,000**

The proposed civil administrative penalty above has been calculated in accordance with the U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990) (Exhibit 1). This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The Penalty Calculation Worksheets for the alleged RCRA UST violation in support of the assessment of civil penalties proposed in this Complaint are attached hereto (Exhibit 2).

### **TERMS OF PAYMENT**

If Respondents do not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full. If such payment is made within thirty (30) calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, Respondents may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Payment is to be made by sending a certified or cashier's check payable to "Treasurer, United States of America," to:

EPA Region 8  
(Regional Hearing Clerk)  
Mellon Bank  
P.O. Box 360859M  
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to:

Brenda Morris, Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8 (8ENF-L)  
999 - 18th Street, Suite 300  
Denver, Colorado 80202-2466

Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing on this matter.

### **OPPORTUNITY TO REQUEST A HEARING**

As provided in RCRA § 9006(b), 42 U.S.C. § 6991e(b), a respondent has the right to request a public hearing within thirty (30) calendar days after this Complaint is served. If you (1) contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the proposed penalty; or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with 40 C.F.R §§ 22.15 and 22.37 within thirty (30) calendar days after this Complaint is received.

Your answer must (1) clearly and directly admit, deny, or explain each of the factual



allegations contained in the Complaint; (2) state all facts and circumstances, if any, which constitute grounds for defense; (3) state the facts intended to be placed at issue; and (4) specifically request an administrative hearing, if desired. The denial of any material fact or the raising of any affirmative defense in your Answer shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 999 - 18th Street, Suite 300, Denver, Colorado 80202-2466, and a copy must be sent to the enforcement attorney listed below.

**IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.**

**IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.**

In accordance with section 6001(b)(2) of the Act, 42 U.S.C. § 6961(b)(2), no administrative order issued to a department, agency or instrumentality of the Federal government shall become final until such department, agency or instrumentality has had the opportunity to confer with the Administrator. The opportunity to confer with the Administrator arises prior to the order becoming final after the administrative proceedings subject to Part 22 have been fully exhausted, including the filing of an appeal with the Environmental Appeals Board ("EAB") pursuant to 40 C.F.R. § 22.30. Within thirty (30) days of service of the EAB's final decision, Respondent may file a written request with the Administrator seeking an opportunity to confer. This order will become final pursuant to section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), if no written request to confer is filed within the designated thirty (30) day period.

### **RESERVATION OF RIGHTS**

This Complaint does not constitute a waiver, suspension or modification of EPA's authority to issue a separate order under section 7003 of the Act, 42 U.S.C. § 6973, based on evidence of an imminent and substantial endangerment to human health or the environment posed by the handling, storage, treatment, transportation or disposal of any solid waste at the facility. Issuance of this Complaint does not forego any civil or criminal action otherwise authorized under the Act.

Respondent may be subject to a citizen suit for violation of this order once effective pursuant to and in accordance with section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

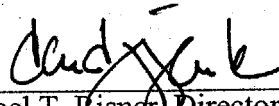
Violation of the terms of this order assessing civil penalties or requiring compliance may result in the assessment of a civil penalty of not more than \$27,500 for each day of continued noncompliance with the order pursuant to section 3008(c) of RCRA, 42 U.S.C. § 6928(c).

### **SETTLEMENT CONFERENCE**

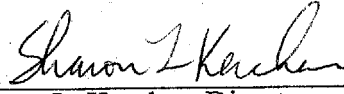
EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below prior to March 15, 2006. After March 15, 2006, please contact Ms. Brenda Morris, Enforcement Attorney, at (303) 312-6891 or [Morris.Brenda@epa.gov](mailto:Morris.Brenda@epa.gov). Ms. Morris' mailing address is set forth in the preceding section entitled "Terms of Payment."

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.


Date: 17 February 2006

By:   
Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program

Date: 27 February 2006

By:   
Sharon L. Kercher, Director  
Technical Enforcement Program

Date: 2/27/2006

By:   
Amy Swanson, Enforcement Attorney  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300 (8ENF-L)  
Denver, CO 80202-2466  
Colorado Atty. Reg. No. 26488  
Telephone: 303/312-6906  
Facsimile: 303/312-6953

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits 1 and 2 were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Gerry Foell, Regional Roads Engineer  
Roads Department  
BIA Great Plains Regional Office  
U.S. Department of the Interior  
115 4<sup>th</sup> Avenue SE  
Aberdeen, SD 57401

Ken McLaughlin, Facility Operator  
Branch of Roads  
BIA Standing Rock Agency  
P.O. Box E  
Fort Yates, ND 58538

2/27/06  
Date

Judith M. McTernan  
Signature

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

#### F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

#### G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the

development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,  
Administrator.

Therefore, 40 CFR part 22 is revised to read as follows:

### PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

#### Subpart A—General

##### Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

#### Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

#### Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

#### Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

#### Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

#### Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

1st Page only

**U.S. EPA PENALTY GUIDANCE  
FOR VIOLATIONS OF  
UST REGULATIONS**

November 1990

Office of Underground Storage Tanks  
U.S. Environmental Protection Agency

## PENALTY CALCULATION WORKSHEET

DATE: 27-Feb-06

RESPONDENT: USBIA FACILITY NAME: BIA Roads :  
ADDRESS: UST NAME/NO.: Unleaded T  
CITY, STATE: Fort Yates, ND

COUNT ID: 1  
VIOLATION: 280.41(a) Failure to monitor tanks at least every 30 days

## 1. ECONOMIC BENEFIT COMPONENT

Avoided Expense: \$0  
Delayed Expense: \$350  
Interest Rate: 0.042  
Marginal Tax Rate: 0.00  
Days of Violation: 62

Net Avoided Costs: \$0  
Net Delayed Costs: \$2

Total Economic Benefit: \$2

## 2. GRAVITY BASED COMPONENT

Potential for Harm: Major  
Extent of Deviation: Major  
Matrix Value: \$1,500  
Cooperation (-25%/+50%): 0.00  
Willfulness (-25%/+50%): 0.25  
History (+50%): 0.25  
Unique Factors (-25%/+50%): 0.00

Adjusted Matrix Value: \$2,250  
DNM: 1.5  
ESM: 1.5

Total Gravity Based Component: \$5,063

UNADJUSTED PENALTY: \$5,065  
ABILITY TO PAY REDUCTION: \$0

PROPOSED PENALTY: \$5,065

## ANATIONS:

Start Date: 07/01/04 Violation End Date: 09/30/04  
7/1/2005 8/31/2005

Avoided Cost Negligible  
Delayed Cost Cost of replacing probe float  
DNC = 154 therefore, DNM = 1.5

ESM: 1.5, because facility is in Indian Country

Cooperat'n: No change

Willfulness: 0.25 Previous Order

History: 0.25 Previous order

Unique: No change

Ability to Pay: No evidence of inability to pay has been demonstrated.

## PENALTY CALCULATION WORKSHEET

DATE: 27-Feb-06

RESPONDENT: USBIA  
ADDRESS:  
CITY, STATE: Fort Yates, ND

FACILITY NAME: BIA Roads  
UST NAME/NO.: Diesel Tank

COUNT ID: 2  
VIOLATION: 280.41(a) Failure to monitor tanks at least every 30 days

## 1. ECONOMIC BENEFIT COMPONENT

Avoided Expense: \$0  
Delayed Expense: \$0  
Interest Rate: 0.042  
Marginal Tax Rate: 0.00  
Days of Violation: 122

Net Avoided Costs: \$0  
Net Delayed Costs: \$0

Total Economic Benefit: \$0

## 2. GRAVITY BASED COMPONENT

Potential for Harm: Major  
Extent of Deviation: Major  
Matrix Value: \$1,500  
Cooperation (-25%/+50%): 0.00  
Willfulness (-25%/+50%): 0.25  
History (+50%): 0.25  
Unique Factors (-25%/+50%): 0.00

Adjusted Matrix Value: \$2,250  
DNM: 1.5  
ESM: 1.5

Total Gravity Based Component: \$5,063

UNADJUSTED PENALTY: \$5,063  
ABILITY TO PAY REDUCTION: \$0

PROPOSED PENALTY: \$5,063

## ANATIONS:

Start Date: 07/01/04 Violation End Date: 09/30/04  
11/01/04 11/30/04

Avoided Costs: Negligible

Delayed Cost: None

ESM: 1.5, because facility is in Indian Country

Cooperat'n: No change

Willfulness: 0.25 Previous Order

History: 0.25 Previous order

Unique: No change